Town of Harpswell Maine 2016

Outdoor Pesticides Control and Fertilizer Use Ordinance

Harpswell, Maine
Attest: A true and exact copy.
Rosalind Knight
Town Clerk, Deputy
Date 3-18-16

TOWN OF HARPSWELL
Outdoor Pesticides Control and Fertilizer Use Ordinance

Enacted May 20, 2004
Amended March 12, 2016

Section 1. Purpose

Scientific studies have shown that certain Insect Growth Regulators (IGR), neonicotinoids and insecticides adversely affect aquatic invertebrates, especially molting shellfish such as lobsters and crabs. In addition to harming shellfish, these chemicals may interfere with beneficial insect species such as bees and lepidopteran pollinators (moths and butterflies). The Town of Harpswell is comprised of approximately 216 miles of coastline, numerous islands and narrow peninsulas such that discharges and runoff from inland areas are extremely close to coastal waters. The application of water soluble fertilizers is apt to runoff into the sea and overload it with nitrogen that causes algal blooms and coastal acidification which affect shellfish by inhibiting their shell formation. The purpose of this Ordinance is to establish regulations that will aid the Town in protecting and maintaining the health of its shellfish resources, marine environment, and pollinators.

Section 2. Definitions

Aerial Spraying – spraying by airplane.

Insect Growth Regulator – a substance or mixture of substances including, but not limited to, azadirachtin, diflubenzuron, and tebufenozide, that act to disrupt the action of insect hormones thereby interrupting or inhibiting the life cycle of insects.

Insecticide – a substance or mixture of substances intended to prevent, destroy, repel or mitigate insects.

Licensed Applicator – a person who applies pesticides, has passed certification exams and is licensed by the Maine Board of Pesticides Control.

Neonicotinoid – a class of neuro-active insecticides including, but not limited to, acetamiprid, clothianidin, imidacloprid, nitenpyram, nithiazine, thiacloprid, and thiamethoxam.

Pesticide – any substance or mixture of substances intended for preventing, destroying, repelling or mitigating any pest; any substance or mixture of substances intended for use as a plant regulator, defoliant or desiccant; and any nitrogen stabilizer. Herbicides, fungicides, insecticides, and rodenticides are considered pesticides. Multicellular biological controls, such as mites, nematodes, parasitic wasps, snails or other biological agents not regulated as pesticides by the U.S. Environmental Protection Agency, are not considered pesticides.

Weed and Feed Fertilizer – a mixture of fertilizer and pesticide.

Section 3. Prohibition and Restrictions on the Outdoor Use of Pesticides

a) The outdoor use of the following pesticides is prohibited in the Town of Harpswell except for use in conjunction with commercial agriculture, nurseries, or golf courses:

i. the use and/or application by any person by any method whatsoever of any Insect Growth Regulator (IGR) as defined, or;

ii. the aerial spraying of any Insecticide whose product label indicates that it is harmful to aquatic invertebrates.

b) No outdoor use of a pesticide shall be permitted within twenty-five (25) feet of the maximum high water line of a great pond, stream, tributary stream, the highest annual tide (HAT) of a coastal wetland or the upland edge of a freshwater wetland; except in conjunction with commercial agriculture, nurseries, or golf courses.

c) The outdoor use and/or application of any neonicotinoid insecticide whose product label indicates that it is harmful to bees or aquatic invertebrates is subject to the following restrictions except in conjunction with commercial agriculture, nurseries, or golf course.

i. Between twenty-five (25) and two hundred fifty (250) feet of the maximum high water line of a great pond, stream, tributary stream, the highest annual tide (HAT) of a coastal wetland or the upland edge of a freshwater wetland, the use of a neonicotinoid insecticide regulated by this ordinance must be done by a licensed applicator. Uses permitted by licensed applicators are limited to applications by stem injection or painting on wind pollinated trees or plants.

ii. Outside of the two hundred fifty (250) foot shoreland zone, neonicotinoid insecticides may be applied by:

a) stem injection or tree painting to wind pollinated trees plants, or
b) other application methods if applied by a licensed applicator.

Section 4. Use of Licensed Pesticide Applicators

Any application, for which compensation is paid, of general use pesticides, restricted pesticides, or weed and feed fertilizers, shall be done by a licensed applicator.

Section 5. Fertilizer Use Limitation

The outdoor use of fertilizers, except in conjunction with commercial agriculture, nurseries, or golf courses, is subject to the following limitations:

a) Within the shoreland zone:

i. No fertilizer shall be applied within twenty-five (25) feet of the maximum high water line of a great pond, stream, tributary stream, the highest annual tide (HAT) of a coastal wetland or the upland edge of a freshwater wetland.

ii. Between twenty-five (25) and two hundred fifty (250) feet of the maximum high water line of a great pond, stream, tributary stream, the highest annual tide (HAT) of a coastal wetland or the upland edge of a freshwater wetland, only non-water soluble fertilizer, compost, or composted manure may be applied.

b) Outside of the two hundred fifty (250) foot shoreland zone, water soluble chemical fertilizer, sludge or non-composted manure may be applied in addition to those allowed in Section 5(a)(ii).

Section 6. Exemptions

a) The following materials are not regulated by the provisions of this Ordinance:
   i. Pet supplies such as shampoos, tick and flea collars, and dusts;
   ii. Insect repellents;
   iii. Aerosol products; and
   iv. Application of materials or substances mandated by state or federal law.

b) The provisions of this Ordinance do not apply to the following uses:
   i. Commercial agriculture;
   ii. Nurseries;
   iii. Golf courses; and
   iv. Indoor uses

Section 7. Waiver

The Conservation Commission is authorized to grant waivers from the provisions of this ordinance when a pest presents: a) an immediate threat to human health, or b) an immediate threat of substantial property damage or loss. A waiver may only be granted to a licensed applicator for a specific use of a specific pesticide for a period of not more than thirty (30) days.

The licensed applicator who seeks a waiver shall apply to the Code Enforcement Officer. The application shall specify the specific nature of the situation requiring a waiver including an analysis of why other approaches for control of the pest cannot be utilized or will create greater risk to the marine environment and/or pollinators, the pesticide use for which the waiver is sought, the proposed method of application, and measures that will be taken to limit any adverse impacts on the marine environment or pollinators.

Upon receipt of an application for a pesticide use waiver, the CEO shall forward the application to the Conservation Commission which shall consider the application within fifteen (15) days. The Commission may obtain outside assistance in its review of the application.

The Commission shall approve the application only if it finds:

1. That there is an immediate threat to human health or an immediate threat of substantial property damage or loss,
2. That control methods allowed by the ordinance are not adequate to address the threat,
3. That the approach for controlling the pest for which the waiver is requested presents the least risk to the marine environment and/or pollinators, and
4. The licensed applicator will undertake measures to limit the potential adverse impacts on the marine environment.

A decision of the Conservation Commission with respect to the granting of a waiver may be appealed to the Board of Selectmen within fifteen (15) days of the Commission's decision. The Board shall act on an appellate basis in reviewing the decision and may affirm or modify the Commission's decision.

Section 8. Random Sampling

When a violation of the provisions of this ordinance is suspected, the Code Enforcement Officer may require that the person, firm, or corporation that is the owner of or having control or use of the property, provide the Town with soil or leaf samples from a location on the property specified by the Code Enforcement Officer in sufficient quantity to permit laboratory testing of the soil or leaf in order to check for the presence of any Insect Growth Regulator (IGR) that prevents molting or inhibits exoskeletal formation or any Neonicotinoid or Insecticide whose product label indicates that it is harmful to aquatic invertebrates or bees.

Section 9. Violations

A person, firm, or corporation who uses or applies or causes to be used or applied any Insect Growth Regulator or Insecticide in violation of the Ordinance shall be subject to a fine of not less than $1,000 nor more than $2,500 for the first violation of this Ordinance. A fine of not less than $2,501 nor more than $5,000 shall be levied against any person, firm, or corporation violating this Ordinance for the second and each subsequent violation. Refusal to comply with the Code Enforcement Officer's sampling request shall result in a fine of not less than $1,000 and may result in further action by the Town and its Code Enforcement Officer in seeking an administrative inspection warrant for the property.

Section 10. Enforcement

This Ordinance shall be enforced by the Code Enforcement Officer. The Code Enforcement Officer is hereby authorized to institute or cause to be instituted, in the name of the Town, any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of this Ordinance.

Section 11. Severability

To the extent any provision of this Ordinance is deemed invalid by a court of competent jurisdiction, the balance of the Ordinance shall remain valid.

Section 12. Table of Prohibitions and Restrictions

The following table provides an overview of the prohibitions and restrictions on the outdoor use of pesticides and fertilizers except for applications in conjunction with commercial agriculture, nurseries, and golf courses. Where there is conflict between the table and the descriptions in the preceding sections, the language of Sections 3, 4, 5 and 6 shall apply.

HARPSWELL PESTICIDE/FERTILIZER PRHOBITIONS AND DISTANCE FROM WATER			
	SHORELAND ZONE		OUTSIDE SHORELAND ZONE
CLASS OF PESTICIDE/ FERTILIZER	25' BUFFER	25' – 250'	OVER 250'
Insect Growth Regulator (IGR)	X	X	X
Neonicotinoids: Label indicates harmful to pollinators or aquatic invertebrates	X	Use only permitted by Licensed Applicator on wind pollinated trees or plants using stem injection or painting	Use only permitted on wind pollinated trees or plants using stem injection or painting. Other application methods will not be restricted if applied by a Licensed Applicator.
All other pesticides	X	No restriction	No restriction
Fertilizer	X	Compost Non water soluble nitrogen fertilizer	No restriction

X = Use prohibited